

Application Number: 10/029,766

Docket Number: 200302293-1

**REMARKS**

Upon entry of this Response, claims 1, 4-9, 11-16, 18-20, and 27-28 remain pending in the present patent application. Claims 1, 9, 16, and 27 have been amended herein. Applicant requests reconsideration of the pending claims in view of the following remarks.

In item 3 of the Office Action, claims 1, 4, 6, 7, 9, 11, 13, 15, 16, 18, 20, 27, and 28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2002/0073304 A1 filed by Marsh et al. (hereafter "*Marsh*"), and further in view of U.S. Patent 6,516,346 issued to Asco et al. (hereafter "*Asco*"), and U.S. Patent 6,742,025 issued to Jennery et al. (hereafter "*Jennery*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). In view of amendments and arguments offered herein, Applicants respectfully assert that the cited combination of references fails to show or suggest each of the elements of claims 1, 4, 6, 7, 9, 11, 13, 15, 16, 18, 20, 27, and 28. Accordingly, Applicants request that the rejection of these claims be withdrawn.

To begin, claim 1 has been amended so as to recite as follows:

1. A computer system, comprising:
  - a central processor unit (CPU);
  - a programmable read only memory (ROM) coupled to said CPU, said ROM containing a digital image;
    - wherein said CPU programs its ROM during a system initialization by the CPU, wherein the system initialization further comprises a booting of said system;
    - a connection to a network and wherein, during the system initialization, said system sends a message to a server coupled to the network to determine whether an upgraded image is available for said ROM; and
    - wherein, during the system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image before loading any portion of the operating system in a random access memory associated with the CPU if the upgraded image is available for said ROM.

As set forth above, claim 1 has been amended to recite the fact that the ROM is flashed with the upgraded image before loading any portion of the operating system in a

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random access memory associated with the CPU. Applicants assert that the cited combination of references fails to show or suggest flashing the ROM with an upgraded image before loading of any portion of the operating system as set forth in amended claim 1. In this respect, *Marsh* shows or suggests the execution of an operating system (bootable kernel) before the upgrade of the ROM. In this respect, reference is made to the arguments presented in the Response to the Office Action of October 20, 2005 in the present patent application.

Consequently, Applicant requests that the rejection of claim 1 be withdrawn. In addition, Applicant requests that the rejection of claims 9, 16, and 27 be withdrawn to the extent that they have been amended to incorporate subject matter similar in scope to claim 1 above. In addition, Applicant requests that the rejection of claims 4, 6, 7, 11, 13, 15, 18, 20, and 28 be withdrawn as depending from claims 1, 9, 16, or 27.

In addition, in item 4 of the Office Action, claims 5, 12, and 19 stand rejected under 35 U.S.C. §103 as being unpatentable over *Marsh*, *Asco*, and *Jennery* as applied to claim 1, and further in view of U.S. Patent 6,594,757 issued to Martinez (hereafter "*Martinez*"). Claims 5, 12, and 19 ultimately depend from claims 1, 9, and 16 as amended herein. Accordingly, Applicants request that the rejection of these claims be withdrawn for the same reasons described above with respect to claims 1, 9, and 16.

Next in item 5, claims 8 and 14 have been rejected under 35 U.S.C. §103 as being unpatentable over *Marsh*, *Asco*, and *Jennery* as applied to claim 1, and further in view of U.S. Patent 6,009,524 issued to Olarig et al. (hereafter "*Olarig*"). Claims 8 and 14 ultimately depend from claims 1, and 9, respectively. Accordingly, Applicants request that the rejection of claims 8 and 14 be withdrawn for the same reasons described above with respect to claims 1 and 9.

Application Number: 10/029,766Docket Number: 200302293-1**CONCLUSION**

It is respectfully requested that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding this Response, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,



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